LIM TENG HONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 26, 1956]

[Ipoh — Criminal Appeal No. 24 of 1956]

Road Traffic — Road Transport Proclamation — Motor Vehicles Third Party Risks Regulations, reg. 3(1) and (2) — Disqualification — Period of disqualification.

The appellant in this case was convicted of driving a motor car without there being in force a Third Party Insurance Policy in contravention of regulation 3(1) of the Motor Vehicles Third Party Risks Regulations. He was fined $250 and disqualified from holding a driving licence for a period of two years. He appealed against the disqualification.

Held: (1) by regulation 3(2) of the Motor Vehicles Third Party Risks Regulations, disqualification for 12 months follows automatically on a conviction and there is no power in the Court to make any order of any sort; (2) therefore the order of disqualification in this case must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Mahendran for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. : —The appellant in this case was convicted in the Magistrate's Court at Ipoh of driving a motor vehicle without there being in force a Third Party Insurance Policy in contravention of Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations made by the Commissioner for Road Transport under the Road Transport Proclamation. He was fined $250 and disqualified from holding a driving licence for a period of two years.

He appealed against so much of his sentence as consisted in disqualification from holding a driving licence for two years. I allowed the appeal and set aside the order of disqualification.

Regulation 3(1) of the Regulations in question provides that it shall not be lawful for any person to use a motor vehicle unless there is a Third Party Insurance Policy in force in respect of such user and sub-regulation (2) provides that any person acting in contravention of the Regulation shall be liable to fine or imprisonment and

"Shall (unless the Court for special reasons. thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction".

I do not pretend to speak with any confidence as to the confused mass of B.M.A. Proclamations, Emergency Regulations and Regulations made under B.M.A. Proclamations which constitute the Road Traffic law of this unfortunate country. But Regulation 3(2) says that the disqualification which it attaches to a conviction is to be "without prejudice to the power of the Court to order a longer period of disqualification" and I have been unable to discover, nor has the Deputy Public Prosecutor been able to shew me, anything that gives the Court any power to disqualify on conviction for such an offence under the Regulation. It seems to me, and again I speak without certainty, that no such power exists. Under the Regulation disqualification for twelve months follows automatically on a conviction and I am satisfied that in the absence of anything outside the four corners of the Regulation there is no power in the Court to make any order of any sort. It was for that reason that I set aside the order disqualifying the present appellant for two years.

I think I should point out that Regulation 3(2) is the same as section 35(2) of the English Road Traffic Act, 1930. Under that Act, however, the words "without prejudice to the power of the Court to order a longer period of disqualification" clearly refer to the power given to the Court by section 6 of the Act which provides that any Court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle the Court shall order him to be disqualified for holding a licence for such period as the Court thinks fit. I can, however, find nothing corresponding to section 6 of the English Act in our legislation.

Appeal allowed.

PUBLIC PROSECUTOR v. ABDUL MANAP

[O. Cr. J. (Briggs J.) December 11, 1952]

[K. L. — Criminal Trial No. 64 of 1952]

Penal Code, ss. 96 & 99 — Private defence — Retaliation in excess of private defence.

The accused in this case was charged with voluntarily causing grievous hurt by stabbing the complainant. The fact that he stabbed the complainant was never denied and the only contested issue was how far his offence might be annulled or diminished either because there was a proper exercise of the right of private defence or because there was provocation. The facts were that the parties had a dispute about some rent payable by the complainant for a padi field. Both parties had lost their tempers, and the accused, a much smaller man, struck the complainant. It was not suggested that the blow was a serious one. The complainant in retaliation throttled and severely assaulted the accused and the latter had no opportunity to escape. He stabbed the complainant.

Held: (1) notwithstanding that the accused struck the first blow and therefore the complainant was entitled to exercise his right of private defence, the complainant's retaliation was of such a violent nature that it exceeded private defence; (2) the accused in his turn was entitled to exercise his right of private defence, and, on the facts, his exercise thereof was not excessive.

CRIMINAL TRIAL.

B. Sheldon (Federal Counsel) for the Public Prosecutor.

Accused in person.